The existing state of the authorities is quite confused. It is generally agreed that equity may act where a party to an equitable suit seeks to try the self-same issue in a subsequent criminal suit,[12] or tries to interfere by criminal prosecutions with an act ordered by the court.[13] But whether the fact that the criminal proceeding would involve irreparable injury to the plaintiff's property calls for equitable interference is not uniformly decided; though by the better view the jurisdiction is conceded.[14] And the authorities are in even greater conflict where the jurisdiction is sought to be based on the avoidance of multiplicity of suits at law; that is, by a bill of peace. Where there are many defendants at law, and all unite in raising the same issue of law as a defense, it would seem that equity should take jurisdiction.[15] An injunction under such circumstances was, however, refused in a recent case. *J. W. Kelly & Co.* v. *Conner*, 123 S. W. 622 (Tenn.). Similarly, where a single plaintiff seeks by the bill to avoid multiplicity of suits, all raising the same issue of law, the bill should be allowed.[16] Whether in the latter case the plaintiff need first establish his right at law is not altogether clear on the authorities. The majority of the cases do not enforce this requirement.[17] The minority view would, however, seem applicable where the bill is laid as a pure bill of peace, but there appears to be no multiplicity of suits pending. If the common question is one of fact, it may seem doubtful as a matter of policy whether the bill should be allowed, because of the resulting invasion of the province of the jury in criminal trials.[18]

JURISDICTION OF EQUITY TO ENJOIN THE PASSAGE OF A MUNICIPAL ORDINANCE. — The considerations which lead equity to enjoin the enforcement of municipal ordinances are referred to in the preceding note. Certainly if the enforcement of a particular ordinance could not be restrained, an injunction will not lie against its passage. But the converse of this proposition is not necessarily true. Municipal assemblies have a power of legislation, delegated to them by the legislature, in the exercise of which they should be as immune from judicial interference as is the legislature itself.[1] And as a court may not interfere with the legislature while delib-

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[12] Mayor of York *v.* Pilkington, 2 Atk. 302. *Cf.* Hedley *v.* Bates, 13 Ch. D. 498. See Harkrader *v.* Wadley, 172 U. S. 148.

[13] Turner *v.* Turner, 15 Jur. 218.

[14] Dobbins *v.* City of Los Angeles, 195 U. S. 223; Ryan *v.* Jacob, 6 Wkly. L. Bul. (Oh.) 139; Shinkle *v.* City of Covington, 83 Ky. 420. See Grand Junction Waterworks Co. *v.* Hampton, etc., [1898] 2 Ch. 331. *Contra*, Suess *v.* Noble, 31 Fed. 855.

[15] City of Chicago *v.* Collins, 175 Ill. 445. *Cf.* Ewelme Hospital *v.* Andover, 1 Vern. 266. *Contra*, Wade *v.* Nunnely, 19 Tex. Civ. App. 256 (no bill unless irreparable damage); State *ex rel.* Kenamore *v.* Wood, 155 Mo. 425.

[16] Third Ave. R. R. Co. *v.* The Mayor, etc., 54 N. Y. 159; Block *v.* Crockett, 61 W. Va. 421. But see City of Galveston *v.* Mistrot, 47 Tex. Civ. App. 63 (no bill unless irreparable damage); Predigested Food Co. *v.* McNeal, 1 Oh. N. P. 266.

[17] Third Ave. R. R. Co. *v.* Mayor, etc., *supra*. See Sylvester Coal Co. *v.* St. Louis, 130 Mo. 323. *Contra*, West *v.* Mayor, 10 Paige (N. Y.) 539. See Lord Tenham *v.* Herbert, 2 Atk. 483.

[18] Arbuckle *v.* Blackburn, 113 Fed. 616; Predigested Food Co. *v.* McNeal, *supra*. See Davis *v.* American Society, etc., 75 N. Y. 362; Davis *v.* Fasig, 128 Ind. 271, 276. *Cf.* Tribette *v.* Illinois Central R. R. Co., 70 Miss. 182.

[1] New Orleans Waterworks Co. *v.* New Orleans, 164 U. S. 471.

erating upon the adoption of a law, the general rule is that equity will not enjoin the passage of an ordinance which is legislative in character. *Chicago, Rock Island, & Pacific Ry. Co.* v. *City of Lincoln*, 124 N. W. 142 (Neb.).

But a municipal corporation also exercises other than legislative functions. And, while the rule above is everywhere recognized, it has frequently been held that it has no application if the ordinance is not legislative in character; in which case its passage may be enjoined.[2] Even cases adopting this distinction as a basis of decision reach conflicting results because of the difficulty of determining whether a particular ordinance is in fact legislative. Thus there have been decisions both ways as to enjoining the passage of an ordinance granting to a public service corporation the privilege of using the streets.[3] And, although there would seem to be no distinction, in this connection, between an ordinance authorizing a contract with a gas company and one authorizing a contract with a water company, yet relief has been refused in the former case [4] but granted in the latter.[5] A different limitation on the general rule is adopted in other cases, which hold that an injunction will issue against the passage of an ordinance which is *ultra vires* the municipal body about to pass it, even though the ordinance is clearly legislative in character.[6] Under such circumstances a few courts have said that relief by injunction may be had as well before as after its passage.[7] Much more frequently, however, it has been held that the relief will not be granted in any case unless the mere passage of the ordinance, as distinguished from its enforcement, would cause irreparable damage.[8] Were this rule followed strictly, it would seem to preclude relief in any case; for an injunction either against the enforcement of the ordinance, or the execution of the contract authorized, or against the exercise of the privilege granted, would, under any circumstances, be a remedy wholly adequate.[9]

This being so, no hardship could result from a general rule that an injunction should never be issued against the passage of an ordinance. And it is believed that such a rule would be a proper limitation on the jurisdiction of equity. Certainly, no convincing reason in favor of a further extension has been suggested in any of the cases. Indeed, the distinctions drawn in the decisions have little merit, on principle, as bearing on the question in hand, and have led only to confusion. Other things being equal, it seems preferable that the members of municipal assemblies be left to exercise their discretion in voting on subjects under discussion without interference by the courts.

REMEDIES OF AN ABUTTING LANDOWNER WHOSE PROPERTY IS INJURED BY PUBLIC WORKS. — Since 1850 the constitutional provision that property shall not be taken for public use without compensation has been construed to apply to the right of an abutting landowner not to have his property de-

[2] Roberts *v.* City of Louisville, 92 Ky. 95.

[3] State *ex rel.* Rose *v.* Superior Court of Milwaukee, 105 Wis. 651; Albright *v.* Fisher, 164 Mo. 56; State *ex rel.* Abel *v.* Gates, 190 Mo. 540.

[4] Montgomery Gas-Light Co. *v.* City Council of Montgomery, 87 Ala. 245.

[5] Poppleton *v.* Moores, 62 Neb. 851.

[6] International Trading-Stamp Co. *v.* City of Memphis, 101 Tenn. 181.

[7] See Spring Valley Water-Works *v.* Bartlett, 16 Fed. 615.

[8] Murphy *v.* East Portland, 42 Fed. 308.

[9] See Whitney *v.* Mayor, etc. of New York, 28 Barb. (N. Y.) 233.